IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

CRL.A.No. 800 of 1999()

CC.No.113/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VADAKKANCHERRY
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APPELLANT/COMPLAINANT:

ACHUTHAN, S/o.AVASSERY SANKARAN,
VARAVOOR VILLAGE,
THALAPPILLY TALUK(PENSIONER)

BY ADV. SRI.VAKKOM N.VIJAYAN
SMT.V.RENJU

RESPONDENTS/ACCUSED:
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1. MADHAVAN, S/o. SANKARAN,
VARAVOOR VILLAGE, VARAVOOR DESOM,
THALAPPILLY TALUK.

2. VINOD, S/o. MADHAVAN,
VARAVOOR VILLAGE, VARAVOOR DESOM,
TALAPPILLY TALUK.

R1 BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN,J

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Crl.Appeal No.800 of 1999

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Dated this the 4th Day of June, 2007

JUDGMENT

This appeal is filed against the acquittal order passed in C.C.No.113 of 1998 on the file of the Judicial Magistrate of First Class, Vadakkancherry. The complainant's case before the court was that the respondent/accused trespassed into his property on 23.05.1996 at about 9.p.m and destroyed the barbed wire fencing and also uprooted 13 granite posts fixed on the eastern boundary of the property of the complainant. Further it was alleged by the complainant that when he interfered, he was threatened by the respondents with a chopper and 'elanga'. Due to the action of the respondents a loss of Rs.1,500/- has been caused to the appellant/complainant.

2. To prove this case the appellant examined four witnesses and filed documents before the court. After closing the evidence of the appellant, the accused were questioned under Section 313 of Cr.P.C. Denying the allegations with the complainant the respondents had stated that they have not

committed any offence and on their side Ext.D1 was also marked. Considering the entire evidence, the trial court acquitted the accused. Against that judgment, this appeal is filed.

3 This Court heard the learned counsel appearing for the appellant and perused the records made available to this court. The trial court had considered the evidence of PW1- the complainant. PWs 2 to 4 were examined as eye witnesses. The evidence of PW1 had been rejected by the trial court on the ground that his evidence was full of contradictions and is unliable. The evidence of PWs 2 to 4 was also discarded by the court below on the ground that they are not speaking the correct version before the court. The learned trial Magistrate had considered the evidence of these witnesses inter alia and also found that the appellant/complainant miserably failed to prove the case against the respondents. Apart from the above findings, this Court is of the view that the appellant failed to make out a case to interfere with the judgment of the trial and there is compelling circumstances to do so. Apart from that, the incident took place during 1996 and almost 11 years have been elapsed. This Court is of the view that the parties might have

patched up their difference of feelings within this distance of time.

In the above circumstances, the appeal fails and it is dismissed.

K.THANKAPPAN,JUDGE

dvs